

## Message Text

CONFIDENTIAL

PAGE 01 SANTIA 04619 031708Z

53

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C O N F I D E N T I A L SANTIAGO 4619

E.O. 11652: GDS

TAGS: CI, PFOR, SOCI

SUBJECT: ANALYSIS OF FACH TRIAL FINDINGS

REF: SANTIAGO 4591, 2281, 2172, 4512

1. SUMMARY; FACH TRIBUNAL'S SUMMARY OF FINDINGS, VERDICTS AND SENTENCES ISSUED JULY 30 CONSIDERS AND REJECTS EACH OF GENERAL ARGUMENTS OFFERED BY DEFENSE IN TRIAL WHICH ENDED JUNE 7. IN ARGUMENT FOR ITS COMPETENCE, TRIBUNAL MAKES BASIC POINT THAT STATE OF WAR EXISTED IN CHILE EVEN BEFORE CHILEAN PRESIDENTIAL ELECTION OF 1970 -- BETWEEN STATE AS REPRESENTED BY ARMED FORCES, AND PARAMILITARY GROUPS SUCH AS MIR. MEMBERS OF THESE LEFTIST EXTREMIST GROUPS REPRESENTED THE "ENEMY" WITHIN SENSE OF CODE OF MILITARY JUSTICE.

2. TRIBUNAL CITES DREYFUS CASE, SOVIET PURGES OF 1930'S, EXECUTION BY USG OF ROSENBERGS, AND CUBAN TRIAL OF BAY OF PIGS INVADERS AS PRECEDENTS FOR TRIALS OF THOSE DEALING WITH "ENEMY" ALTHOUGH ACTUAL STATE OF WAR NOT DECLARED.

3. LEADING DEFENSE LAWYER SAYS (PRIVATELY) THAT, RATHER THAN LEGAL DOCUMENT, SUMMARY IS POLITICAL JUSTIFICATION FOR PUNISHMENT OF POLITICAL OPPONENTS BASED ON FALSE CONFESSIONS EXTRACTED BY TORTURE.

CONFIDENTIAL

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PAGE 02 SANTIA 04619 031708Z

END SUMMARY.

4. IN 234-PAGE DOCUMENT ISSUED JULY 30, CHILEAN AIR FORCE (FACH) TRIBUNAL SUMMARIZED CHARGES AGAINST EACH OF DEFENDANTS, DISCUSSED GENERAL LINES OF DEFENSE OFFERED, LISTED EVIDENCE AGAINST EACH DEFENDANT, AND FINALLY GAVE VERDICTS AND SENTENCES.

5. TRIBUNAL WENT TO CHILEAN CODE OF MILITARY JUSTICE TO JUSTIFY SAME ARGUMENTS REPORTED IN REFTELS SUPPORTING ITS COMPETENCE, EXISTENCE OF A STATE OF WAR BEFORE ITS OFFICIAL DECLARATION ON SEPTEMBER 11, 1973, AND CHARACTERIZATION OF LEFTIST EXTREMIST ORGANIZATIONS AS "ENEMIES".

6. TRIBUNAL MAINTAINS THAT ART. 418 OF CODE ESTABLISHES GROUNDS FOR FINDING THAT WAR EXISTED BEFORE SEPTEMBER 11. ARTICLE SAYS, "IT IS UNDERSTOOD THAT A STATE OF WAR...EXISTS NOT ONLY WHEN IT HAS BEEN DECLARED OFFICIALLY... BUT ALSO WHEN IT EXISTS IN FACT OR WHEN MOBILIZATION FOR WAR HAS BEEN DECREED, EVEN THOUGH AN OFFICIAL DECLARATION HAS NOT BEEN MADE." ART. 419 DEFINES "ENEMY" AS NOT ONLY FOREIGNER BUT ANY CLASS OF REBELLIOUS FORCES OR SEDITIOUS ORGANIZATIONS ORGANIZED MILITARILY. TRIBUNAL MAINTAINS THAT PARA-MILITARY FORCES OF MARXIST LEFT CONSTITUTED LEGAL "ENEMY" PLANNING FOR WAR EVEN BEFORE ALLENDE GOVERNMENT TOOK OFFICE, AND THAT ARMED FORCES' PLANS AND EFFORTS TO COUNTER SUBVERSION AND TERRORISM AT THAT TIME CONSTITUTED "MOBILIZATION". "ENEMY" CAN THUS BE ACTUAL OR POTENTIAL, AND RIGHT OF TRIBUNAL TO TRY DEFENDANTS UNDER CONDITIONS OF STATE OF WAR IS JUSTIFIED.

7. TRIALS AND EXECUTIONS FOR TREASON IN OTHER COUNTRIES EVEN IN TIME OF PEACE ARE CITED AS PRECEDENTS. TRIBUNAL ARGUES FRANCE TRIED CAPT. DREYFUS; U.S. TRIED AND EXECUTED ROSENBERGS; STALIN PURGED ARMED FORCES IN 1930'S AND CUBA TRIED BAY OF PIGS INVADERS, ALTHOUGH IN EACH CASE STATE OF PEACE LEGALLY EXISTED WITH COUNTRY FOR WHICH CITIZEN COMMITTED TREASON. THUS, AFTER ESTABLISHING THAT STATE OF WAR DID EXIST, TRIBUNAL DEMONSTRATES THAT FOREIGN OR DOMESTIC "ENEMY" CAN EXIST EVEN IN PEACETIME, AND QUESTION OF STATE OF WAR VS STATE OF PEACE IS THEREFORE MOOT.

8. CONSIDERING DEFENSE CHARGE THAT ONLY "EVIDENCE" AGAINST DEFENDANTS WAS OWN CONFESSIONS, WHICH UNDER CODE WOULD BE INSUFFICIENT TO CONVICT WITHOUT OTHER EVIDENCE, TRIBUNAL FINDS CONFIDENTIAL

CONFIDENTIAL

PAGE 03 SANTIA 04619 031708Z

ADDITIONAL EVIDENCE ONLY IN FORM OF CONFESSIONS OF OTHER DEFENDANTS. THERE IS NO EXPLANATION FOR VARIATION IN SENTENCES FROM WHAT PROSECUTION ASKED.

9. DOCUMENT DOES NOT MENTION TORTURE OR OTHER PRESSURE TO OBTAIN CONFESSIONS DESPITE KNOWN PRESENTATIONS OF COMPLAINTS BY DEFENSE LAWYERS TO COURT.

10. ONE OF LEADING DEFENSE ATTORNEYS OF FACH TRIAL GAVE SHARPLY CRITICAL ANALYSIS OF FINDINGS TO EMBOFF AUGUST 2. SAID HE AND DEFENSE COLLEAGUES WERE SURPRISED AT "UNPROFESSIONAL" QUALITY AND OBVIOUS POLITICAL IMAGE OF TRIBUNAL DOCUMENT. HE RIDICULED REFERENCE TO ROSENBERG ESPIONAGE CASE AS IRRELEVANT TO FACH CASES, WHERE ESPIONAGE CHARGES WERE NOT MADE. THOUGHT TRIBUNAL IGNORED LEGAL ASPECTS OF SPECIFIC CHARGES AND PROOFS AGAINST SPECIFIC DEFENDANTS IN FAVOR OF POLITICAL JUSTIFICATION OF COUP AND RIGHT TO TRY POLITICAL OPPONENTS. CLAIMED FLATLY THAT ONLY "EVIDENCE" CONSIDERED IN TRIAL WAS CONFESSIONS, MOST OF WHICH RESULTED FROM TORTURE OR WERE SIMPLY INVENTED BY PROSECUTION. SAID HIS CLIENT, EX-CAPT. CARLOS CARBACHO, WAS TORTURED THREE DAYS BEFORE AGREEING TO SIGN EVERYTHING PUT BEFORE HIM. CONCLUDED THAT TRIAL MUST BE SEEN BY OBJECTIVE OBSERVER AS "CRUEL, CRUDE VIOLATION" OF ALL CHILEAN LEGAL TRADITIONS.

11. COMMENT: LEGAL ARGUMENT OVER TRIBUNAL'S JURISDICTION SEEMS TO US STRAINED BUT IN CHILEAN AYES IT MAY BE TENABLE. EVEN DEFENSE ATTORNEY QUOTED ABOVE SAID THERE IS ROOM FOR DEBATE OVER FINE POINTS OF EXISTENCE OF STATE OF WAR BEFORE SEPTEMBER 11. CHILEAN LEGISLATION AND CODE OF MILITARY JUSTICE ARE VAGUE ENOUGH SO THAT FACH'S POSITION IS AT LEAST ARGUABLE.

12. THIS QUESTION ASIDE, HOWEVER, TRIBUNAL DOCUMENT SEEMS MORE A POLITICAL JUSTIFICATION FOR 1973 COUP AND FOR GOC'S RIGHT TO TRY DEFENDANTS THAN A LEGAL PRESENTATION. IT QUOTES EXTENSIVELY FROM MARX, ENGELS, LENIN AND MAO ON TACTICS FOR OVERTHROW OF BOURGEOIS STATES, FOR EXAMPLE, AND WARNS THAT INFILTRATION OF MARXISM'S NON-CHRISTIAN, ALIEN IDEOLOGY INTO NATION, CITY, WORK AND FAMILY MUST BE ROOTED OUT BY MILITARY ACTION.

13. FACH TRIBUNAL, PRESUMABLY WITH JUNTA APPROVAL, WENT TO GREAT EFFORT TO MOUNT WHAT IT OBVIOUSLY REGARDS AS DEFINITIVE  
CONFIDENTIAL

CONFIDENTIAL

PAGE 04 SANTIA 04619 031708Z

DEMONSTRATION OF GUILT OF UNIDAD POPULAR ADHERENTS AND, MOST GENERALLY, OF JURIDICAL JUSTIFICATION FOR COUP. WE ARE NOT COMPETENT TO MAKE LEGAL JUDGMENT, BUT IT APPEARS THAT MANY FOREIGN OBSERVERS, PARTICULARLY THOSE WHO DO NOT UNDERSTAND CHILE'S LEGAL AND CONSTITUTIONAL TRADITIONS, WILL BE UNIMPRESSED WITH TRIBUNAL'S CASE. IT IS SIGNIFICANT THAT TRIBUNAL APPARENTLY FAILED TO COMPREHEND REACTION OUTSIDE CHILE THAT WOULD BE EVOKED BY REFERENCES TO DREYFUS CASE, STALIN PURGE TRIALS AND OTHERS CITED AS PRECEDENTS.  
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